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The Proposed Arbitration Treaties with  
Great Britain and France

BY

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President of the United States

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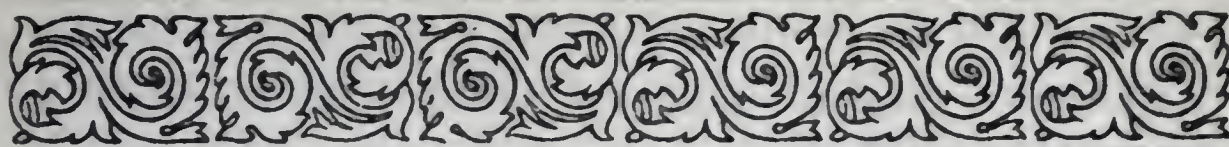
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## The Proposed Arbitration Treaties with Great Britain and France\*

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By William Howard Taft

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I am very glad to be present at the opening of this conference of the society favoring an international arbitral court. I believe this to be an ideal which, when realized, will offer a practical solution for the difficulties now presented by universal armament.

Europe is an armed camp. Each nation feels that it cannot, in justice to its people, or with safety to its integrity, avoid expending money enough on its army and navy to prevent its dissolution should international controversies arise that could not be solved otherwise than by war. Repeated attempts have

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been made to secure a lessening of armament; they have failed because each nation says to the other, "Well, you do it first." The consequence is that to anyone charged with the responsibilities of government under present conditions armament is a necessity.

I have been engaged for some time in preaching peace—and preaching it just as hard as I can; but I have got to recommend to Congress the appropriation of money enough to have an armament that shall meet existing conditions.

For example, the question presents itself: Shall we fortify the Panama Canal? There are those who are so much interested in peace, and who believe in it so much as a sign, as a symbol, that they think the suggestion that the Panama Canal ought to be fortified is inconsistent in the mouth of one who advocates peace as strongly as I do. But it is one thing to look forward to an ideal and it is another thing to meet present conditions. My own impression is that he who proceeds practically to a reform is much more likely to accomplish it than he who sacrifices everything to a name and to a fetich. We are not seeking war by fortifying the Panama Canal; we are not going



to fight anybody on account of fortifying the Canal. But we built the Canal as part of our coast line and to double the efficiency of our navy, and if we should now neutralize the Canal, it would give the same facilities to our enemy in attacking our shores as we enjoy ourselves, which is to lose half the value of the Canal as a war measure. Hence, I am in favor of fortifying the Panama Canal, preventing its use by the enemy, and of using it ourselves in self-defense. In other words, we must use common-sense in dealing with every problem. A position like this which recognizes present conditions is not inconsistent with pressing forward to change the conditions that render necessary such a policy.

Now, there are those—and I am not disposed to do other than to reason with them—who say that war is absolutely necessary for the development of humankind, and they can point in history to certain wars without which the progress that was made might not have been. They can say, for instance, that we should still be related to England as a colony but for the War of Independence; that we might still have slavery but for the Civil War by which we were enabled to excise the cancer

of slavery; but there are other wars that we might have avoided had we proceeded as we are planning to proceed today.

War doubtless does develop the stronger virtues of men. Anything that tends to make men sacrifice themselves does so. But I rather think that in hunting through the life of a nation and the life of a generation, we will find enough things to test character, to invite sacrifice, without our insisting upon having war in order to develop human nature.

I am glad to be here today, because it is only about a year ago that I had the honor of attending a banquet of this same Society, and of repeating at that banquet what I had ventured to say only casually some six months before, to wit: That I had noticed in a number of our treaties with foreign nations that there were excepted from the causes which were to be arbitrated those which involved national honor or vital interest; that I did not see any reason why we might not just as well arbitrate a question of national honor or vital interest as anything else. That observation was followed at the banquet of this Society a year ago by the statement that I hoped we might be able to make a treaty with some prominent



nation in Europe by which we would agree to arbitrate every controversy that could arise between us, whether it involved national honor or vital interest or not. That remark was taken up first by the Ambassador from France, who sat next to me. When I sat down he said, "We will make such a treaty with you," and I replied, "I'm your man." Then we waited awhile, and Sir Edward Grey, on the floor of Parliament, in deploring the increase in naval appropriations, referred to my remarks and said that, speaking for his government, they were most anxious to enter into such a treaty. He was followed by Mr. Balfour, the leader of the Opposition, who concurred in his statement and urged the wisdom of such an agreement between us. There followed the necessary negotiations which resulted in these treaties, one with Great Britain, and one with France. They were submitted to the Senate. The majority of the Committee on Foreign Relations reported the treaties to the Senate with the recommendation that they be ratified with an amendment which struck out the third clause. I am coming to that a little later. I only want now to take up the first proposition involved in these

treaties, and that is the elimination from the exceptions in the old treaties of questions of national honor and vital interest. It struck me, as I am sure it must strike you when you read a treaty that says, "We will agree to arbitrate everything that arises between us except questions of national honor or vital interest," that you have omitted, from the things which you are to arbitrate, about everything that is likely to lead to war. At least, you have put into the treaty words which any nation that desires to avoid arbitration can fall back upon as including everything that they wish to include within that description.

So far, therefore, as facilitating peace and avoiding war are concerned, these treaties might just as well have been written in water, except that they express the general desire to arbitrate when it is easier to arbitrate than otherwise.

Now, I am asked, "Would you arbitrate a question of national honor? Would you submit to arbitration your personal honor?" I have no hesitation in answering that exactly as it is put: I would much prefer to submit to a board of arbitration, composed of intelli-



gent jurists of an impartial mind, the question whether our national honor has been attacked, and if so, what the reparation of the injuring nation ought to be, than to go to war about it.

What would war settle? If we wiped our enemy off the map it would settle the fact that we were the stronger nation, and if we were wiped off the map it would settle the fact that they were—and that is all it would settle!

Napoleon said that the Lord was on the side of the stronger battalions. Of course, if we wiped the enemy off the map, we would at once claim that the Lord was with us, and that would be a satisfactory arrangement. But it is a little difficult to explain our relations to the Lord if we are wiped off the map.

That was exactly the principle of the *code duello*. If I claimed to be a gentleman and was insulted by a gentleman—of course, we all had to be gentlemen in those days in order that the code should work—if I were insulted by a man who called himself a gentleman, the *code duello* required that I should go out and make myself a target for him because he had insulted me. Of course the reverse was true, that he had to make himself a target for me, and if I hit him, the arrangement seemed for

the time to be satisfactory to me; but if he hit me—and being a larger mark, I think that would be more probable—it would take a good deal longer than the two months, or four months, of convalescence, for me to reason out the satisfactoriness of the arrangement by which my honor was satisfied by his shooting me.

Now, at common law, if one man sued another on a promissory note or a bond, and the defendant came into court and was a little short of witnesses, and the issue raised was, whether he had ever made the note, or if he had made it, whether he had paid it, the defendant could demand wager of battle. Then the judge handed out or had somebody hand out for him two swords, and the defendant and the plaintiff went at each other, and if the defendant cut off the head, or the hand, or the arm, or in any way rendered helpless the plaintiff, that proved either that the defendant had never made the note, or if he had made it, that he had paid it. They discontinued that several hundred years ago; but I should like to have you take home with you the question, in what regard that method of settling the issues in a court of law differs



from the method of settling issues now between the nations. If the analogy is not exact, I do not know what an analogy is. We ought to find some way to avoid resort to the ridiculous method we now have of settling international controversies.

Certainly when reference to the old way of settling an issue in court awakens our ridicule it ought at the same time to awaken our shame that we have not, up to now, found some wiser method of settling international controversies which present precisely the same kind of issues.

Now, the treaties are alike; they are so much alike that I can take one as an example of both.

Let me take the English treaty. It recites that we have not had war with England for nearly one hundred years, that we do not intend to have war with England, ever, and that we have made treaties of arbitration which have exceptions that we wish to eliminate, and that we propose to make a treaty that will render war impossible. We then proceed to agree, first, that we will submit either to The Hague Tribunal, or to some other tribunal to be agreed upon by the parties, all differences

hereafter arising between the two nations, which are justiciable; that is, as defined by the clause, which can be settled by the application of the rules of law or equity. Then the clause provides for a special agreement, to be initiated by the President and approved by the Senate, submitting to arbitration the question which has arisen.

The second clause provides—perhaps I ought to take the second and third clauses together—the second clause provides for the organization of what is called a joint high commission. That consists of three Englishmen and three Americans, unless they agree to select other than what are called the nationals of the two parties. There is some question as to how these men are to be selected; there have been those who intimated a doubt as to whether it was wise to permit the selection to be left to the President. I think that is not a very important question. I am entirely willing to have the men confirmed by the Senate, or to have them selected by the Senate, if that be necessary. That, I think, can be easily changed or made so as to suit everybody. Whether it be by the President or by the President and the Senate, I have no



doubt but that three suitable persons would be selected. Now this joint high commission is to perform, under the second clause, two functions. The first function is to take up every difference, whether it be justiciable or not, to investigate and to make recommendations for its solution without arbitration. In other words, it is a means of avoiding, not only war, but arbitration.

The Senate committee, or a majority of it, have found in that second and third clause rather a stirrer-up of war than a clause which avoids war. I confess myself unable to follow their reasoning. The clause provides that the commission shall first investigate and finally recommend, shall give hearing and be an adviser to both nations; and it provides that if either nation require it the final advice shall not be given for a year. I regard that as one of the most admirable clauses in the treaty, for the reason that it postpones the effect of the momentary passion of the people of either country so that they have a chance to cool off; they have a year to think over the question whether they wish to precipitate their country into the sufferings of war. There is nothing that helps the solution of difficulties arising

from anger so much as time. I do not know but that I may be entering upon a confession when I put an illustration before you with the thought that some men in the audience perhaps have been through the same experience. Something happens at the office or the store to anger you and you cannot get it out of your system. You go home and make yourself disagreeable to your wife and you hear her whisper to the children, "Papa isn't feeling very well today; don't disturb him," and you are left solitary with nobody to interrupt or interfere and with nothing to prevent your contemplation of yourself. After awhile, as the darkness of the evening comes on, you realize what an ineffable ass you are making of yourself and how you are treating those who had nothing to do with the original cause as if they were responsible for it.

Now what is true of an individual is true of a nation. It is not so true as I would like to have it, because the conscience of an individual is usually better and higher than that of a nation; but the progress of Christian civilization is the elimination of the difference between the conscience of the individual and the conscience of the nation. We have the right



to reason that time, which helps so much in subduing the unreasoning quality of anger and momentary passion in individuals, will have the same effect upon nations; and in many respects I think that clause is one of the best things in the treaty, and that if we can hold the two nations off for a year, they will never come to blows at all. But the nub of the trouble, which the Senate committee has, is in the function to be performed by this joint high commission when there is a difference of opinion as to whether the controversy arising is a justiciable one which must be arbitrated under the treaty. That commission in such case has the right to decide whether the controversy comes within the definition or not; and if it is decided that they shall go on to arbitrate, the treaty recites that they shall go on to arbitrate as provided in the first clause.

Now, under the first clause, the Senate must concur in a special agreement defining the question to be arbitrated, and there probably—Mr. Knox thinks certainly—the Senate has the power to withhold its consent even after the joint high commission has acted. The Executive is bound. The Senate may still refuse. But if a commission like this, unanimously,

or by a vote of five to one, as the treaty requires, decides the question to be arbitrable, the pressure upon the Senate would be such that probably it would not withhold its consent to an agreement.

Personally I would have made the treaty—if I had the making of it and the ratification, too,—I would have made the treaty so that the board of arbitration should have had the jurisdiction to decide, upon the application of either party, whether the question arising came within the treaty. I would leave the question to it exactly as I would leave the question to a court of superior jurisdiction. But evidently we have not quite got to that stage though this is a step in that direction. I believe the arbitral court to be the solution of the difficulty; and when I say “arbitral court,” I mean a court whose jurisdiction and power are established by joint agreement of all nations, a court into which one nation may summon another for a hearing upon a complaint and for a judgment, and may rely upon the judgment being carried out through the public opinion of the nations, or by an auxiliary force, if necessary. When we have such an arbitral court, then disarmament will follow.



Now then, if we are going to take a step in that direction, if we are going to take up arbitration between nations *seriously*, if we hope first to make such treaties of arbitration with all the world and later see the world of nations make such treaties with each other, then, my friends, in order to make a real step forward we ought to make an arbitration treaty that means something; and we ought to make it "for keeps." We ought to make it like the medicine that the Indian desired, something that bites when it goes down because the Indian does not believe that otherwise the cure will be effective.

Arbitration cannot result in victory for both parties. Somebody has got to be beaten. We cannot play "Heads I win, tails you lose." We have got to have the people accept the fact that sometimes we may be beaten. We ought not to arrange something with a string to it so that when we think we are going to lose we can back out of arbitration and open up the possibility of war. We ought to put ourselves in such a situation that sometimes it will hurt us; we ought to subscribe to and carry out the treaty and stand to its terms. If we do not, then we are not making any

progress. Therefore, while I appreciate the sensitiveness of the Senate with respect to this, and while I regard that feeling with respectful consideration, I think, nevertheless, that it is mistaken. I believe that we can well afford to go ahead and occasionally lose an arbitration in the general cause of the peace of the world.

We are a just nation. We are not likely to get into difficulties without just cause. But sometimes we may, and if we do, we ought to be willing to stand up and take the consequences or not go into arbitration at all. It is all right to advocate peace and arbitration from the platform, and it is all right to have peace societies and conventions pass resolutions, and all that sort of thing; but unless we are willing to put ourselves in a place where we may be prejudiced sometimes by an arbitration, then the arbitration we agree to is not one of those real steps forward in the progress of civilization that we ought to urge.

I feel very deeply about the ratification of these treaties. The European countries have gone into the matter whole-heartedly. The reason is that when the question was agitated in England, in France, and even in Germany,



it was the common people that pressed it to conclusion; they were the ones that rose and urged that the treaties be made and carried through. And why? The answer is significant; it is most pregnant: because they realized that when they go to war it is the plain common people that have to "pay the piper," it is the plain common people that are food for powder. There are only a few leaders that wear the feathers and gold lace; it is the plain common people, their mothers, their sisters and their daughters, that have to go through agonies of spirit waiting to hear from the battlefield. Hence it is that it is the cause of the people the world around that we are advocating; it is the cause of the people the world around that by pressing these treaties for ratification we are upholding.

Now, are we going to say that because of narrowness in our constitution we cannot enter into a treaty like this and lead the world? We are a people of ninety millions between oceans; we have the greatest resources of any country in the world; and if we had a prolonged war we have resources that would enable us to meet any country successfully. We are not afraid of any country, and we are not

progressing in the direction of peace because we are afraid. Therefore, we occupy a position of advantage in dealing with a question like this such that nobody can charge us with cowardice in seeking other means than that of war in settling controversies. We have no entangling alliances, we are isolated by the oceans which in event of war would give us an advantage which all the nations of the world realize; and all the nations of the world, therefore, expect us to help them in that difficult situation in which they find themselves, where they are an armed camp and have to watch each other as if they were constant enemies.

Now, are we, by rejecting these treaties in the Senate, going to say to the world, "Oh yes, we have the deepest sympathy with you; we hope you will come out all right; we hope that peace will prevail. But you see we have got a provision in our constitution that requires us to stop and look on. We can cheer you with encouraging words, but we cannot join you in the work!"

Norway and Sweden have made a treaty in which they agree to arbitrate certain classes of questions, and they say, "We will submit to



the board of arbitration the question whether any issue which does arise comes within the class described in the treaty." If Norway and Sweden can do that, why cannot we? That Constitution of which we are so proud, that Constitution which is the greatest fundamental compact of government ever struck from the brain of man, has always shown itself equal to any emergency that has heretofore arisen, with its simple, elastic provisions which enable it to move on with the nation's progress, which open themselves to embrace every improvement that is needed for the progress of Christian civilization and the progress of our government! Are we going to give that Constitution such narrow construction as to take a retrograde step and to become merely an observer of the world's progress toward universal peace, or are we going to lead? Well, I think there is only one answer to that question. I sincerely hope that the Senate will respect that answer. I believe that answer ought to come from the body of the people; I believe that they want these treaties ratified, and I am very sure that when they are ratified they will be such a substantial step forward that we will all rejoice in their accomplish-

ment. I do not regard them as important in keeping us out of a war with England or with France; we are never going to war with England or with France. They are useful by way of example to the whole world that we are willing to put ourselves in that situation with respect to those countries, and that those countries are willing to put themselves in that situation with respect to us. The moment the treaties are ratified there will be other nations only too glad to make the same treaties with us; and when we have made treaties with all the nations of this character, we must necessarily and reasonably expect that they will begin to make such treaties with each other; and when that is done we have reached the stage of an arbitral court.

As I have said, these are useful treaties by way of example. But I should like to call to your attention and to the attention of this society some special instances in treaties that are now pending in the Senate, bringing about a hope of peace where peace is not.

We made a treaty with Santo Domingo. Santo Domingo was one of those republics, so-called, in the West Indies, where the professional business of a revolutionist was much



more lucrative than that of lawyer or doctor, or any of the learned professions; and the point of attack was always the revenue office, the customs office. There was a good deal of trouble about foreign debts. Finally, I don't know exactly how, we did get into such a relation with Santo Domingo, subsequently confirmed by treaty, that we appointed revenue officers to collect the revenue under an agreement to deposit 45 per cent. in New York to meet the foreign debt, which had been scaled down properly, and to pay 55 per cent. of the revenue to Santo Domingo. That has been in operation for five years. Meanwhile they have not had any revolution there at all and the 55 per cent. of the present revenue far exceeds the whole revenue they collected when they were not paying anything on the debt at all; and the debt under the application of this 45 per cent. is now nearly wiped out. Now, how explain this? Why, the professional revolutionist learned that if he sought the only object of a revolution, to-wit, the custom-house where he might collect the taxes, Uncle Sam would interfere. We did not have to send any naval force or any army there. The revolutionist

simply had to know that Uncle Sam would be there if he interfered; and they have gone on now and are becoming, I hope, a prosperous republic.

The center of most wars in this hemisphere is in the five republics of Central America, Honduras, Nicaragua, Guatemala, Costa Rica and San Salvador. In Honduras they have had seven revolutions in fifteen years (laughter), and now they are a little tired.

Honduras reaches from one ocean to the other and whenever they have a fight in any one of the republics they seek a battle-ground in the territory of Honduras; and so she maintains an army, and spends I don't know how much a year on it. But just now she hasn't got any money to maintain an army; she hasn't any credit; and having learned of the successful operation of the system we established in Santo Domingo, she has asked us to help her. Accordingly we have made a treaty with her by which she is authorized to make a contract of loan. She has a twenty-six million debt, which, with compound interest that has not been paid, amounts to one hundred and twenty-six million dollars. Arrangements with her foreign creditors reduce the whole debt, under



certain conditions, to four and a half million dollars, and she wishes to borrow ten million dollars in order to pay off this debt and, in addition, make certain improvements that are very necessary to the prosperity of the country. She has succeeded in making that contract in New York with an American banking firm. The treaty provides that we shall advise her as to whether the contract is a good one, and that we will join with the fiscal agent in recommending the collectors of the revenue which is pledged as a security for the payment of the loan of ten millions. Then there is a provision in the treaty that the United States reserves to itself the right to exercise such direction as may seem wise over the revenue agents thus appointed. There is not any obligation on our part to go in there if we do not want to; but the very fact that we have the right to go there is enough to eliminate the profession of the revolutionist from Honduras; because there is no profit in the business unless they can get at the revenues.

Now the Senate objects—or some of the Senate object—and they have published this treaty for the consideration of the people. A similar treaty, under similar circumstances,

has been made with Nicaragua ; and I say those treaties ought to be confirmed. It is said that the Monroe Doctrine does not require us to see to the collection of loans. But that is not the question. Of course we know that the Monroe Doctrine was directed against an invasion by the Holy Alliance of the republican governments which had been established in the countries that had made themselves independent of Spain. But the condition that confronts us today is this: we live in a hemisphere with twenty-one different republics. All are close neighbors of ours with whom we trade. We are a great, rich nation, able to do a great many things, able to help others in the community of nations, and there rests upon us as a nation just as much of an obligation to help in a community of nations like that, as there rests upon a great, fortunate, wealthy man in a small community of individuals the duty to help the unfortunate among them. It is not going to cost us anything ; it will probably help our trade ; but I am not advocating either of those reasons as the basis for our action. The Lord did not give us the advantages we have without charging us with the responsibility of using them for the benefit of the world.



Now as a means of preventing wars,—frequent wars—these two treaties, small matters as they are, are more important than the other treaties that I have been discussing, though of course in their world importance and throughout a long period of years the latter are of vastly greater interest. But for the immediate settlement of war these two treaties are more direct than the treaties with France and with England.

Just here I am reminded that certain objections which I have not considered are advanced against the greater treaties. One is the Monroe Doctrine. The answer is that that doctrine does not come within the description of a justiciable matter. Sir Edward Grey said so on the floor of Parliament, and John Bassett Moore, an eminent authority on international law, has said the same thing.

Again, it is urged that an attempt may be made to arbitrate a question of immigration and that some undesirable race might thus be forced upon us. Well, it is a first principle of international law that each country shall decide for itself what aliens shall come within its borders. Congress could exclude if it chose—I give the instance only to show the

arbitrary character of the power—all bald-headed immigrants, or all red-headed immigrants. Therefore, unless we bind ourselves by treaty there is no possible way of forcing the reference of such a question to arbitration.

So it is with respect to the tariff. We have a right to exclude anything from coming into the country, or to impose any conditions upon its coming in; therefore, they could not force us to arbitrate the question of the tariff. Other questions might be mentioned the reference of which to arbitration might embarrass us. Personally I am willing to be embarrassed. I think we ought to come to a point where we will not take positions that cannot be sustained under the rules of law and equity. But I realize that there is a strong feeling the other way; and we have not gone to that extent in these treaties. We are making progress by them, and if we ratify them we will have taken a long step forward; and having taken that step, then we can look about to see what step we can take next in order to make surer the coming of that arbitral court for which this Society is founded, and in the prosecution of which object I think all good men ought to help.





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 WILLIAM ALLEN WHITE, Kansas.  
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 PRINCE DE CASSANO, Italy.

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1. The New Era of International Courts, by Simeon E. Baldwin. August, 1910.

2. The Necessity of a Permanent Tribunal, by Ernest Nys. November, 1910.

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3. The Importance of Judicial Settlement, by Elihu Root. February, 1911.

4. The Development of the American Doctrine of Jurisdiction of Courts Over States, by Alpheus H. Snow. May, 1911.

5. An International Court of Justice the Next Step, by George Grafton Wilson. Salient Thoughts, by Theodore Marburg. August, 1911.

6. The work of the Hague Court, by N. Politis. November, 1911.

7. The Proposed Arbitration Treaties with Great Britain and France, by William Howard Taft.